

ADVISORY LETTER 06-04

June 5, 2006

TO: ALL AUTHORIZED AND APPROVED UNAUTHORIZED PROPERTY AND CASUALTY INSURERS (SURPLUS LINES INSURERS)

RE: PROCEDURES TO PROVIDE FOR A 24 MONTH PRESCRIPTION PERIOD FOR POLICYHOLDERS WITH HURRICANE KATRINA AND RITA CLAIMS TO FILE SUIT

STATUTE AND REGULATION REFERENCES: LSA-R.S. 22:691; LSA C.C. Art. 1978 *et seq.*

It has come to my attention that the vast majority of homeowners policies issued to insureds in the state of Louisiana limit an insured's right to file suit on a homeowners insurance claim to a period of 12 months (LSA-R.S.22:691). However, the unprecedented number of claims generated by Hurricane Katrina and Hurricane Rita have made the prospect of a strict adherence to a 12 month prescriptive period impractical and will hinder the legitimate efforts of the insurer and insured to work toward an amicable settlement of all aspects of the claims adjustment and resolution process with regard to their claims.

Emergency Rule 22 (LDOI's Hurricane Mediation Program) was issued by the Commissioner of Insurance on December 22, 2005 to help resolve the estimated hundreds of thousands of homeowners claims caused by Hurricane Katrina and Hurricane Rita and to avoid the prospect of the inherent delays and costs of litigation between the insurer and the insured. However, due to the overwhelming number of claims caused by these extraordinary events, it will be impossible to resolve all such claims, whether through mediation or the traditional claims adjustment process, prior to the impending one-year prescriptive period for Hurricane Katrina (August 29, 2006) Hurricane Rita (September 24, 2006).

Under applicable Louisiana law, there are at least two mechanisms by which an admitted insurer or surplus lines insurer can legally extend the one year prescriptive period to a two year prescriptive period.

First, the insurer can file with the Louisiana Department of Insurance a unilateral endorsement to the underlying insurance policy stating the following:

"No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within twenty-four months next after the inception of the loss from Hurricane Katrina and/or Hurricane Rita."

Second, an insurer may file with the Louisiana Department of Insurance a stipulation in favor of any and all policyholders that had a claim for damages under the policy of homeowners insurance that clearly and unambiguously states that the insured shall have a two-year period from the inception of the loss to file suit and the said stipulation shall be considered a *Stipulation Pour Autrui* pursuant to the Louisiana Civil Code Article 1978 in favor of, and for the benefit of, the insured.

I hereby urge and request all admitted insurers and surplus lines insurers to file an endorsement or a stipulation as set forth above, on or before August 1, 2006, applicable to any insured that filed a homeowner's claim due to damages allegedly caused by Hurricane Katrina and/or Hurricane Rita, that grants the insured the right to file suit within two (2) years from the date of the inception of the loss giving rise to the insured's Hurricane Katrina and/or Hurricane Rita claim. If the Department does not receive said endorsement or stipulation on or before August 1, 2006, the Department will presume that the insurer does not intend to waive or extend the prescriptive period set forth in the insurance contract.

Endorsements or stipulations should be directed to Mrs. Kathlee Hennigan, Director of Forms and Compliance, (1702 N. Third Street), P.O. Box 94214, Baton Rouge, LA 70804. All insurers who opt to file an endorsement or stipulation will be listed on the Department's Web site so that insureds will have access to the information that the one-year prescriptive period has been extended to a two-year prescriptive period by each insured's respective insurer. Any questions regarding this Advisory Letter should be directed to Walter Corey, Attorney for the Department of Insurance, at wcorey@ldi.state.la.us or by telephone at 225-219-0605.

JAMES J. DONELON
COMMISSIONER OF INSURANCE